

~~CP~~ Replm "PROFESSIONAL - ENGINEERING" w/ INSURANCE

PROFESSIONAL ENGINEERING MASTER SERVICES AGREEMENT

This **PROFESSIONAL ENGINEERING MASTER SERVICES AGREEMENT** ("Agreement") is made and entered into as of the _____ day of _____, 20____, by and between [Select Owner Name] with an address of 2020 North Meridian Street, Indianapolis, Indiana 46202, ("Owner") and _____ ("Engineer") with an address of _____.

ARTICLE I INITIAL INFORMATION AND GENERAL REQUIREMENTS

- 1.1 **Statements of Work.** From time to time, as requested by Owner and agreed to by Engineer, Engineer will provide the engineering, design, project administration and other services and related Deliverables (as defined in this Agreement) set forth in such mutually-accepted Statements of Work as may be issued later and all services and deliverables that are reasonably necessary to complete the Project (as defined in each Statement of Work) and produce the results intended ("Services"). Such Statements of Work shall be in the form attached as **Exhibit A**. Nothing in this Agreement shall require Owner to procure any minimum amount of Services from Engineer.
- 1.2 **Changes to the Services.** Owner may change the Services set forth in a Statement of Work, including by adding or deleting scope, by sending written notice to Engineer. Should Engineer believe that such changes require an equitable adjustment in Engineer's compensation or schedule for its Services (including the costs of revisions to Deliverables previously prepared) or other terms of the Statement of Work, it shall notify Owner in writing of its request for such adjustments no later than fourteen (14) calendar days following its receipt of such changes from Owner; provided, however, that in no event shall such written request for adjustments be provided to Owner after Engineer's commencement of the changed Services. Except as otherwise instructed in writing by Owner, Engineer shall not commence the changed Services until Owner and Engineer have mutually accepted Engineer's timely requested adjustments, if any, to its compensation or schedule for its Services or other terms of the Statement of Work. No changes to the Services or Deliverables shall be made by Engineer except with Owner's prior written agreement in accordance with the terms of this Section 1.2.
- 1.3 **Standard of Care.** Engineer shall perform the Services in conformity with the professional and technical standards of reasonable care, skill, prudence, and diligence ordinarily used and exercised by members of the engineering profession who are familiar with projects of the same type, nature, complexity, and size as the Project. ~~When applicable law requires any Services to be performed by licensed professionals, Engineer shall provide those Services through the performance of persons or entities duly licensed to practice their professions.~~
- 1.4 **Compliance with Law.** Engineer and its Services and Deliverables shall comply with all applicable federal, state and local laws, rules, codes, ordinances, regulations, and orders and applicable industry standards. In the event of any changes (or any pending changes of which Engineer becomes aware) to such applicable laws, rules, codes, ordinances, regulations, orders, or standards, Engineer shall promptly notify Owner and shall propose modifications to the Services that will minimize the impacts of such changes to Owner and the Project.

STRIKE 2

Comment [A1]: Highly doubtful if this would ever be needed. Potentially strike this clause?

1.5 **Relationship of Parties.** Engineer acknowledges Owner's reliance upon Engineer's special and unique abilities and skills to perform the Services and accepts the relationship of trust and confidence established between it and Owner by this Agreement. Except as otherwise provided in the Statement of Work, Owner will provide customary information regarding the requirements for the Project, and Engineer agrees to perform the Services so as to further the interest of Owner with respect to such requirements, including Owner's program, design criteria and intent, budget, schedule, and procedures. Engineer shall consider and propose to Owner for Owner's written approval such alternative designs, materials, equipment, and construction for the Project as may further such interests of Owner. Except with Owner's prior written consent, Engineer shall not engage in any activity or accept any employment, interest, or contribution that would reasonably appear to compromise Engineer's professional judgment.

VALUE ADD
~~IS~~
TO REMAIN

Comment [A2]: Strike/delete?

1.6 **Cooperation.** Engineer will cooperate with, and coordinate its Services and Deliverables with the services, deliverables, and work of, other consultants and contractors retained by Owner with respect to the Project. Engineer shall attend such meetings and hearings and provide such Deliverables, information, certificates, and documents as may be requested by Owner with respect to the design, permitting, development, or construction of the Project. Upon request by Owner, Engineer shall file such Deliverables and documents and contact governmental authorities with jurisdiction over the Project so as to obtain their approval of Engineer's Deliverables. Owner will give Engineer reasonable access to the Project sites as required for its performance of the Services.

STRIKE R

Comment [A3]: Not needed for this type of work

1.7 **Design Review.** If the Services include Engineers use, completion, or evaluation of any designs, drawings, specifications, reports, studies, submittals, or other documents or services provided to Engineer by Owner or by an architect, engineer, consultant, or contractor not retained directly or indirectly by Engineer, Engineer shall take reasonable and prudent steps to verify the accuracy and completeness of such items and shall promptly report in writing to Owner any conflict, error, or omission Engineer discovers by such investigation and verification. Engineer shall assume all risks and shall be liable to Owner for any damage, loss, cost (including reasonable attorneys' fees), or liability arising from any conflicts, errors, or omissions in such items which are not discovered by Engineer due to its failure to conduct such reasonable and prudent verification or which are discovered by Engineer but not promptly reported in writing to Owner.

STRIKE R

Comment [A4]: Strike...not part of Westfield's responsibilities?

1.8 **Notification of Defects by Engineer.** If Engineer observes or otherwise acquires (or should have acquired through the exercise of reasonable diligence) knowledge of any fault, defect or non-conformity in the design, development, or construction of the Project, Engineer shall give prompt written notice to Owner. Engineer shall be liable to Owner for any damage, loss, cost (including reasonable attorneys' fees), or liability arising from its failure to give such notice to Owner.

1.9 **Notification of Defects by Owner.** If Owner's designated representative acquires actual knowledge of any fault or defect in the Services or Deliverables or of any default by Engineer, Owner shall give prompt written notice to Engineer. However, in no event shall Owner be required to verify the accuracy or completeness of the Services or Deliverables nor the compliance of the Services or Deliverables with the requirements of this Agreement, the Statement of Work, or any applicable laws, rules, codes, ordinances, regulations, orders, or standards, as such verification obligations are solely the responsibility of Engineer. Any approval or submission of

the Services or Deliverables by Owner shall not be deemed to relieve Engineer of its obligations under this Agreement.

1.10 **Correction of Services.** If the Services or Deliverables fail to comply with the requirements of this Agreement or the Statement of Work, then Engineer, at its own expense, shall promptly perform such additional services and make such revisions or corrections to the Services or Deliverables as required to cure such default.

1.11 **Scheduling & Liquidated Damages.** Time is of the essence of this Agreement. Owner shall furnish Engineer with information and services, and shall render approvals and decisions with respect to the Services, as required of Owner under the Statement of Work in a timely manner. Engineer shall perform and complete the Services and provide the Deliverables strictly in accordance with each Milestone listed in the Statement of Work and shall perform the Services in such a manner so as to not impede or delay the services or work being done by other consultants or contractors retained by Owner. ~~Because the parties agree that quantifying losses arising from Engineer's delay in providing each Deliverable strictly in accordance with the applicable Milestone is inherently difficult, they have agreed that Engineer should be liable for Liquidated Damages in the amounts listed in Section 5 of Exhibit A, not as a penalty, but rather as a reasonable measure of damages, based upon the parties' experience in the industry and given the nature of the losses that may result from such delay. For any other type of delay, hindrance, disruption or interference by Engineer in the commencement, prosecution, or completion of the Services or the design, permitting, development, or construction of the Project, Engineer shall be liable to Owner for any actual damage, loss, cost (including reasonable attorneys' fees), or liability arising from such delay, regardless of whether liquidated damages have been assessed as a result of Engineer's failure to meet the any related Milestones.~~

STRIKE
"NO LIQUIDATED
DAMAGES" R

WHAT PERFORMANCE
METRICS? R

Comment [A5]: Most likely will not have liquidated damages. Will use Performance metrics that, if not adhered to will result in actions including potential termination of Contract

1.12 **Engineer's Warranties.** Engineer warrants that it is, and will remain through the term of this Agreement, authorized to do business in Indiana, authorized to perform the Services required, financially solvent and able to pay all of its debts as they become due, and in possession of sufficient working capital to perform its obligations under this Agreement.

1.13 **Taxes.** Owner is a utility and it may be exempt from certain Indiana sales, use and other taxes. In no event shall Owner be liable for any taxes from which Owner is exempt. Upon Engineer's request, Owner will provide tax exemption certificates with respect to such taxes.

ARTICLE II ENGINEER'S COMPENSATION

2.1 **Compensation & Limitation of Liability.** Owner will compensate Engineer for the Services (including the delivery of the Deliverables) in the amount set forth in the Statement of Work and the terms and conditions of this Agreement. Engineer waives any right it has to any additional compensation in excess of the amount set forth in the Statement of Work, except for amounts approved in advance in writing by Owner for a change in the Services as set forth in Section 1.2, and in no event shall Owner be liable to Engineer for incidental or consequential damages of any type, including, without limitation, losses of business, reputation, or profit (except profit on the Services and Deliverables as set forth in the Statement of Work).

2.2 **Invoice Amount.** Subject to the limitations in Section 2.2.1, Engineer shall submit to Owner an invoice for the Services properly completed through the date submitted, including all incurred reimbursable expenses (as defined in the Statement of Work) that are related to such Services. Such invoices shall be submitted promptly following Engineer's proper completion of each Milestone set forth in the Statement of Work. If no Milestones are set forth in the Statement of Work, Engineer shall submit an invoice on or before the 10th day of each month for all Services rendered, and all allowable reimbursable expenses incurred, through the end of the preceding month; provided, however, that in no event shall the amount of compensation due to Engineer under such invoice exceed the percentage of the total compensation set forth in the Statement of Work that is proportional to the percentage of Services properly completed through the end of the preceding month.

Comment [A6]: Can DPW have Invoices submitted by 10th of Month for previous month works

2.2.1. **Compensation Schedule and Invoices that Exceed the Compensation Maximum.** This Section 2.2.1 shall apply unless the approved Statement of Work expressly excludes it. Using the most current approved Project Milestone Schedule and beginning within ten (10) business days after receiving the purchase order referred to in Section 11 of Exhibit A and by the 10th of each month thereafter, Engineer shall prepare, submit, and update, for Owner's review and approval, a detailed schedule of monthly compensation throughout the duration of Engineer's Services ("Project Compensation Schedule"). Each monthly update shall take into account any change in any approved project scope. Engineer's invoices shall adhere to the Project Compensation Schedule as the Project progresses with a maximum ten percent (10%) excess variance allowed, that is, 10% greater than the Project Compensation Schedule for a particular month's invoice (the "Compensation Maximum"). Unless a variance from the Compensation Maximum is approved in writing in advance by Owner at least 45 days prior to the date of Engineer's invoice, Engineer's invoice shall not exceed the Compensation Maximum.

Comment [A7]: This will not apply to contract with Westfield

- 2.3 **Invoice Procedures.** Engineer's invoices shall be in a form reasonably acceptable to Owner and shall be supported by such detailed documentation supporting Engineer's right to the requested payment as Owner may reasonably require (including, without limitation, evidence of completion of the designated Milestone, evidence of delivery of any required Deliverable, invoices from subconsultants and vendors, time sheets with respect to any amounts based on hourly rates, and receipts for reimbursable expenses).
- 2.4 **Lien Waivers.** With each of its invoices, Engineer shall provide (on its own behalf and on behalf of its subconsultants and vendors) such lien waivers, sworn statements, and other Deliverables and documents as Owner may reasonably require. The delivery of such complete and executed lien waivers, sworn statements, and other Deliverables and documents to Owner shall be a condition precedent to any obligation of Owner to make any payment on the invoice.
- 2.5 **Reimbursable Expenses.** Unless otherwise agreed in the Statement of Work, reimbursable expenses are the actual, reasonable direct costs (without mark-up) incurred by or through Engineer for the expenditures allowed by the Statement of Work and directly related to the Project. Except as otherwise specifically approved in advance in writing by Owner, reimbursable expenses shall not include any expenses incurred by or through Engineer prior to the effective date of the Statement of Work, amounts for Engineer's or its subconsultants' or vendors' general overhead or principal office expenses (including insurance premiums), or for payment of overtime rates or premium labor rates, or any amounts incurred due to the fault, neglect, or breach of this

Agreement by Engineer. When any expenditure requires Owner's advance approval, the costs shall not be reimbursed to Engineer in the absence of such approval.

- 2.6 **Payment Terms.** Except as otherwise provided in the Statement of Work or permitted under this Agreement, Owner shall make payment on Engineer's invoices in the amount properly due, owing, and unpaid to Engineer within thirty (30) days of Owner's receipt of such invoice and all supporting documentation, lien waivers, sworn statements, and other related documents.

Comment [A8]: OK with Westfield?

- 2.7 **Withholding Payment.** Owner shall have the right to withhold from payments otherwise due to Engineer such amounts as may be necessary to protect Owner from any damage, loss, cost (including reasonable attorneys' fees), or liability arising from Engineer's failure to perform in accordance with the terms of this Agreement, including, without limitation, as a result of: (1) delays, errors, or omissions in the Services or Deliverables; (2) third-party claims filed or reasonable evidence indicating probable filing of such claims (unless security acceptable to Owner is provided by Engineer); (3) failure of Engineer to make payments to its subconsultants or vendors (unless security acceptable to Owner is provided by Engineer); (4) reasonable evidence that the Services or Deliverables cannot be completed for the unpaid balance of the compensation set forth in the Statement of Work; or, (5) damage to or losses, costs (including reasonable attorneys' fees), or liabilities of Owner or its affiliates, subsidiaries, successors or assigns or any separate consultants or contractors retained by Owner for which Engineer is responsible under the terms of this Agreement or applicable law.

Comment [A9]: This will be based upon performance metrics. I don't see this as kicking in but could

- 2.8 **Notification to Engineer.** If Owner determines that Engineer is not entitled to all or part of the amount requested in an invoice submitted in accordance with this Agreement, Owner will promptly notify Engineer in writing of its decision to withhold such payment. The notice shall indicate the amount Owner is withholding from such payment and the reasons for the withholding. When Owner determines that the reasons for the withholding have been cured by Engineer, it will release such withheld amounts that are properly due, owing, and unpaid to Engineer. If Engineer objects to such withholding, it may challenge such determination by Owner in accordance with the dispute resolution procedures below.

- 2.9 **Subconsultant and Vendor Payments.** ~~Engineer agrees that payments received from Owner shall be held in trust for payment to subconsultants and vendors who have provided Services through Engineer. Engineer shall pay its subconsultants and vendors for all Services in accordance with the terms of its agreements with them and as required by applicable law. Owner reserves the right, but has no obligation, to make payments for the Services through the use of joint checks payable to Engineer and any of its subconsultants or vendors or it may pay Engineer's subconsultants or vendors directly. Any amounts so paid by Owner shall be credited against Owner's obligation to pay Engineer the compensation set forth in the Statement of Work.~~

Comment [A10]: Not anticipating Westfield to use any staff but their own

- 2.10 **No Waiver by Owner.** No payment to Engineer or its subconsultants or vendors, nor any use of the Project, shall operate as an approval or acceptance by Owner of the Services or Deliverables or as a release of Engineer from any of its obligations.

- 2.11 **Final Payment to Engineer.** Acceptance by Engineer of any sum tendered by Owner as final payment under a Statement of Work shall constitute a waiver of all claims of Engineer and its subconsultants and vendors with respect to the Services performed in connection with those

STRIKE 3

payments, except those claims identified by Engineer in writing as unresolved in its invoice for such final payment.

- 2.12 **Records and Audits.** Engineer shall exercise reasonable accounting controls necessary for the proper financial management of the Project and shall keep full, detailed, and accurate accounts with respect to all Services and related expenses in accordance with industry standards and generally acceptable accounting principles. Such controls and accounts shall be reasonably acceptable to Owner. All related records (along with copies of all Deliverables and of Engineer's electronic records and other documents related to the Project) shall be maintained by Engineer, and available at all reasonable times to Owner and its designees for inspection, audit, and copying, for a period of ten years following termination of this Agreement (or such longer period as may be required by law).

ARTICLE III OWNERSHIP AND USE OF DOCUMENTS

- 3.1 **Work-for-Hire Deliverables.** The designs, drawings, specifications, reports, studies, submittals, estimates, schedules, building information model, data, information, and other documents and services, including those in electronic form, prepared, provided or procured by or through Engineer under this Agreement ("Deliverables") have been created as "works-for-hire" and (except with respect to any standard specifications or submittals of Engineer or its subconsultants or vendors) shall be the exclusive property of Owner. Engineer and each of its subconsultants and vendors shall assign and transfer to Owner all property rights, including, without limitation, copyrights, to all Deliverables (except such standard specifications or submittals) and shall execute such documents as may be reasonably requested by Owner to confirm Owner's ownership of such Deliverables. All Deliverables shall be provided promptly to Owner in the formats that Owner reasonably requests.
- 3.2 **License to Deliverables.** In the event any Deliverables are not deemed to be the property of Owner for any reason, Engineer and each of its subconsultants and vendors hereby grant to Owner an irrevocable, paid-up, royalty-free and exclusive license to reproduce, use, modify, and make derivative works from all such Deliverables for the design, permitting, development, construction, maintenance, renovation, expansion, modification, or operation (and other similar concepts) of the Project, including the right to sublicense or assign such license to any person or entity; provided, however, that this license shall be non-exclusive with respect to any standard specifications or submittals of Engineer or its subconsultants or vendors.
- 3.3 **Release of Engineer.** Engineer and its subconsultants and vendors shall have no liability to Owner arising from (a) the use of a Deliverable on any project other than in connection with the Project described in the applicable Statement of Work or (b) the modification of, or derivative works made from, a Deliverable by any person or entity other than Engineer.
- 3.4 **Indemnity for Infringement.** Engineer warrants that the Services and Deliverables do not infringe on any copyrights, patents or other rights of any third party. Engineer shall defend and indemnify ~~Owner~~ and its affiliates, subsidiaries, successors, and assigns and each separate consultant and contractor ~~retained by Owner~~ with respect to any Project, from and against all actions, damages, losses, costs (including reasonable attorneys' fees), and liabilities arising out of any claim of infringement with respect to the Services or Deliverables.

JR
✓ OK S

OWNER

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EACH OTHER

ARTICLE IV INSURANCE

- 4.1 **Engineer's Insurance.** Upon entering into this Agreement, and prior to commencing performance of any Services, Engineer and its subconsultants and vendors shall secure and maintain without cost to Owner (including responsibility for deductibles and self-insured retention amounts) insurance that will protect Engineer, Owner, CWA, and each of their affiliates, subsidiaries, successors and assigns and each separate consultant and contractor retained by Owner with respect to any Project from claims which may arise out of or result from the Services, whether such Services are performed by Engineer or by its subconsultants or vendors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall be for no less than the amount specified in, and shall extend for no shorter period than required by, the Statement of Work (or such greater amount or such longer period of time as may be required by applicable law).
- 4.2 **Approval of Insurers.** The insurance shall be placed with companies of which Owner approves, in its sole discretion, and that have insurer ratings no lower than "A-" in the latest edition of A.M. Best's Insurance Guide. REGIONS INSURANCE JR
- 4.3 **Evidence of Coverage.** Engineer shall provide evidence of all insurance required under this Agreement or the Statement of Work by providing to Owner promptly upon request certificates of insurance along with all related additional insured and waiver of subrogation endorsements. Complete copies of such insurance policies required of Engineer or its subconsultants or vendors, including all endorsements, shall be provided to Owner promptly upon request. To the extent permitted by law, all such policies and each certificate of insurance shall provide that the indicated insurance will not be materially altered, reduced or canceled prior to at least ten (10) calendar days after written notice by certified mail of such cancellation or change has been provided by the respective insurer or Engineer, and has been received by Owner. No less than fourteen (14) calendar days prior to the expiration, cancellation, or termination of any such policy, Engineer shall supply Owner with new certificates of insurance and additional insured and waiver of subrogation endorsements evidencing all required insurance.
- 4.4 **Failure to Maintain Insurance.** If Engineer or any of its subconsultants or vendors fail to provide or maintain the required insurance, Owner (a) may regard the failure as a material breach of this Agreement and (b) shall have the right, but not the duty, to obtain such required insurance as it may, in its sole discretion, deem prudent. Any such costs may be deducted from any payment otherwise due to Engineer or, upon demand, shall be paid by Engineer as an immediate reimbursement to Owner. Engineer shall be responsible for all damages, losses, costs (including reasonable attorneys' fees), and liabilities arising out of any failure by Engineer or its subconsultants or vendors to provide or maintain the required insurance.
- 4.5 **Status of Additional Insureds.** All insurance required of Engineer or its subconsultants or vendors shall be primary and non-contributory with respect to any insurance maintained by Owner or its affiliates, subsidiaries, successors, and assigns, and each separate consultant and contractor retained by Owner for any Project. If Engineer or its subconsultant or vendor procures insurance

Comment [A11]: ?? Is Westfield Self Insured or who do they use?

Comment [A12]: Any issue with this?

with limits in excess of the required amounts, the additional insureds of such insurance shall be additional insureds with respect to the full limits of such policies.

- 4.6 **Waiver of Subrogation.** Engineer's and its subconsultants' and vendors' insurance carriers shall have no right of subrogation against Owner or its affiliates, subsidiaries, successors, and assigns, or each separate consultant and contractor retained by Owner with respect to any Project, or any of their respective trustees, directors, officers, consultants, agents, or employees. Engineer and its subconsultants and vendors waive all claims they may otherwise have against such persons and entities covered (or required to be covered under the terms of this Agreement or the Statement of Work) by insurance policies of Engineer or its subconsultants or vendors. Engineer shall obtain from each of its subconsultants and vendors and of their respective insurers a waiver of such claims and rights of subrogation in favor of these same protected persons and entities.

ARTICLE V TERMINATION AND SUSPENSION

5.1 Termination for Cause.

- 5.1.1 **Termination by Owner.** If Engineer at any time is in material breach of this Agreement or any Statement of Work, Owner may, at its election and in addition to any other rights it may have under applicable law, terminate this Agreement, the Statement of Work, and/or any or all other Statements of Work, each in whole or in part. Unless such breach is cured to the satisfaction of Owner during the following period, the termination shall be effective fourteen (14) calendar days following written notice to Engineer. R

- 5.1.2 **Termination by Engineer.** If Owner at any time is in material breach of any Statement of Work, Engineer may terminate the applicable Statement of Work. Unless such breach is cured to the satisfaction of Engineer during the following period, the termination shall be effective thirty (30) calendar days following written notice to Owner. 30

- 5.1.3 **Notice of Termination.** A party's written notice under this Section 5.1 shall provide the defaulting party the specific reasons or grounds for the termination, along with reasonable supporting factual details and references to the terms of this Agreement or any applicable Statement of Work that it contends supports such termination.

- 5.1.4 **Payments Following Termination by Owner.** In the event of any termination by Owner under Section 5.1.1, Engineer shall not be entitled to receive any payments from Owner until each Project described in the terminated Statements of Work has been completed. If the unpaid balance of the compensation set forth in the terminated Statements of Work exceeds Owner's costs of obtaining (through replacement design professionals and other consultants) the required Services and Deliverables, plus all other damages incurred by Owner related to the termination or otherwise arising out of Engineer's breach, including Liquidated Damages, such excess shall be paid to Engineer promptly following the completion of each Project described in the terminated Statements of Work. If such costs and damages exceed the unpaid balance of the compensation set forth in such Statements of Work, upon demand by Owner, Engineer shall promptly pay the difference to Owner. Upon a demand for such a payment, Owner shall furnish to Engineer a reasonable accounting of the

costs incurred in obtaining the Services and Deliverables required under the terminated Statements of Work and such other damages recoverable from Engineer in accordance with this Agreement.

- 5.1.5 **Payments Following Termination by Engineer.** In the event of any termination by Engineer under Section 5.1.2, subject to the terms of Article II, Engineer shall be entitled to recover promptly from Owner payment for all Services and Deliverables properly performed and delivered to Owner prior to the effective date of such termination, plus such reasonable out-of-pocket demobilization expenses and third-party cancellation charges as may be incurred by Engineer on account of such termination. In no event shall Owner be liable for any payment for Services or Deliverables not performed and delivered, or not properly performed and delivered, to Owner, including, without limitation, any amount for Engineer's expected overhead or profit, or any other damages, costs or expenses resulting from Engineer's termination under Section 5.1.2 (except such demobilization expenses and cancellation charges that are permitted under this Agreement).
- 5.2 **Termination for Convenience.** This Agreement or any Statement of Work may be terminated by Owner in whole or in part without cause and for its convenience; such termination shall be effective fourteen (14) calendar days following written notice to Engineer. If Owner terminates for convenience, Engineer shall be compensated for all Services and Deliverables properly performed and delivered to Owner on the same terms as provided in Section 5.1.5.
- 5.3 **Termination Conversion.** If any termination by Owner under Section 5.1.1 is subsequently determined in legal proceedings to have been without sufficient cause or otherwise improper, then such termination shall be deemed to be a termination for convenience under Section 5.2.
- 5.4 **Suspension of Services.** Owner may instruct Engineer in writing to suspend its performance of any Services at any time. In such event, Engineer shall be entitled to submit an invoice for Services and Deliverables properly performed and delivered to Owner prior to the date of the suspension—payment for this shall be made by Owner in accordance with Article II. Upon written notice from Owner that such suspension of the Services has ended, Engineer shall promptly recommence its performance of the Services and, no later than fourteen (14) calendar days following its receipt of such notice from Owner, shall provide written notice to Owner of its request for an equitable adjustment in its compensation or schedule under Section 1.2.

ARTICLE VI DISPUTE RESOLUTION

- 6.1 **General.** Owner and Engineer are fully committed to communicating and working with each other so as to avoid or minimize disputes. If disputes do arise, Owner and Engineer will first attempt to resolve the dispute through prompt direct discussions between their designated representatives. If discussions do not resolve the dispute, upon request of either party, the principals of Owner and Engineer shall meet, no later than thirty (30) calendar days following the request, to attempt to resolve the dispute. Prior to the meeting, each party shall provide such relevant information and documents as the other party may reasonably request.
- 6.2 **Continuing Performance.** Pending resolution of any dispute between the parties, including those relating to any change in the Services by Owner under Section 1.2, Engineer shall proceed diligently with the performance and delivery of the Services and Deliverables as required by this Agreement,

and Owner shall continue to make payments to Engineer that are undisputed and due, owing, and unpaid under the terms of this Agreement.

- 6.3 **Mediation.** As a condition precedent to filing a demand for arbitration or claim in any court, all disputes between the parties related to the Services, Deliverables, or this Agreement shall be submitted to nonbinding mediation. Unless the parties mutually agree otherwise, mediation shall be in accordance with the Indiana Rules for Alternative Dispute Resolution then in effect. The parties shall share the mediator's fee equally. The mediation shall be held in Indianapolis, Indiana, and agreements of the parties reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.
- 6.4 **Arbitration.** If Owner and Engineer mutually agree to undertake binding arbitration to resolve any technical disputes with respect to the Services or Deliverables or other disputes, the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules (as they may be modified by mutual agreement of the parties). The arbitration shall be held in Indianapolis, Indiana, and the award rendered shall be final and non-appealable and judgment may be entered upon it in accordance with applicable law in any court with jurisdiction. Owner and Engineer may include by joinder other persons or entities substantially involved in a common question of law or fact to be determined in the arbitration, provided that the party to be joined consents to the joinder.
- 6.5 **Litigation.** Any disputes between the parties not resolved under Sections 6.1, 6.3, or 6.4 shall be decided through litigation venued exclusively in the state courts located in Indianapolis, Indiana by trial to the bench. Trial by jury is expressly waived. Owner and Engineer (and its subconsultants and vendors) each consent to such exclusive venue and to personal jurisdiction over each of them by such courts, and Owner and Engineer (and its subconsultants and vendors) each waive any right to object to the exercise of personal jurisdiction by such courts.
- 6.6 **Costs of Dispute Resolution.** If Owner is the prevailing party in any arbitration conducted in accordance with Section 6.4 or in any litigation conducted in accordance with Section 6.5, it shall be entitled to recover from Engineer all reasonable costs incurred in such binding dispute resolution proceedings, including, without limitation, attorneys' fees, expert consultant expenses, arbitration or court filing and administrative fees, arbitrator compensation expenses, and costs incurred in obtaining, exchanging, or presenting evidence in such proceedings.

ARTICLE VII INDEMNIFICATION; MISCELLANEOUS

- 7.1 **General Indemnity.** To the fullest extent permitted by law, Engineer shall indemnify and hold harmless ~~Owner~~ ^{EACH OTHER}, its Affiliates, and all of its or their trustees, officers, directors, agents, and employees (collectively "Indemnitees") from and against all claims, suits, causes of action demands, losses, damages, costs, expenses, and fees, including attorneys' and consultants' fees, to the extent caused or alleged to have been caused by a negligent act, error, or omission, ~~of a professional service of Engineer or anyone directly employed by Engineer or for whom Engineer is responsible.~~ ^{EACH OTHER} Engineer also agrees to reimburse ~~Owner~~ ^{EACH OTHER} for its fees and expenses, including attorneys' fees, incurred to enforce the provisions of this paragraph.

- 7.1.1 **Types of Claims.** Without limiting the generality of the foregoing and, in addition to it, the indemnification, hold harmless, and other duties and obligations of Engineer under Section 7.1

Comment [A13]: Please read this section closely and comment

shall apply (a) to any claims, suits, demands, causes of action, damages, losses, costs and expenses, including reasonable attorney's and consultant's fees and court costs of whatsoever kind, nature, and type, whether based in contract, tort or otherwise, and (b) to the claims of whatsoever kind, nature, and type, whether based in contract, tort, or otherwise, of any other consultant, contractor, subcontractor, material supplier, or third party, or its employees, against any of the Indemnitees.

7.1.2 **Indemnity for Employees.** In any and all claims against any of the Indemnitees by any employee of Engineer ~~or anyone directly or indirectly employed by Engineer~~ or anyone for whose acts Engineer may be liable, the indemnification obligations under Sections 7.1 through 7.1.3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Engineer under worker's compensation acts, disability benefit acts, or other employee benefit acts.

of the
owner

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7.1.3 **Indemnity for Non-Professional Services.** To the fullest extent permitted by law, Engineer shall indemnify, hold harmless, and defend the Indemnitees from and against all claims if caused in whole or in part by Engineer's negligent performance of non-professional services under this Agreement, provided that any such claim: (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible or real property, including the resulting loss of use and consequential and incidental damages, or is attributable to damages from economic harm or loss; and, (b) is caused by anyone directly or indirectly employed by it or anyone for whose acts it may be liable. The duty of Engineer to defend, indemnify, and hold harmless the Indemnitees under this Section shall exist regardless of whether or not the act giving rise to this duty is caused or claimed to have been caused, in part, by an Indemnatee and such duty shall be determined without regard to any apportionment of liability under the laws relating to Comparative Fault; provided, however, this provision does not apply to claims arising out of or caused by the sole negligence or willful misconduct of the Indemnitees. As used in this Agreement, "non-professional services" means services provided under any Statement of Work except those services excluded from coverage by ISO Commercial General Liability Form CG 00 01 04 13 (or its successor form), Section V – Definitions, definition of "Insured Contract" at Paragraph 9.f., sub-paragraphs (2) and (3).

7.2 **Indemnity for Payment Claims.** To the fullest extent permitted by law, provided that Owner has paid to Engineer all amounts properly due and owing under the terms of this Agreement, Engineer shall defend, indemnify, and hold harmless Owner and its lenders, investors, affiliates, subsidiaries, successors, and assigns from and against all actions, damages, losses, costs (including reasonable attorneys' fees) and liabilities arising out of any payment claim, lien, security interest, or other encumbrance against the foregoing indemnified entities or that attaches to the Deliverables or any other property of Owner or its affiliates (or any improvements now existing or to be constructed) arising out of or related to the provision of any Services or Deliverables by or through Engineer or its subconsultants or vendors. At its own cost, Engineer shall promptly obtain a release and waiver of any such payment claim, lien, security interest, or encumbrance upon demand by Owner or its affiliates.

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7.3 **Governing Law.** This Agreement and all matters related to it shall be governed by the laws of the State of Indiana without regard to its choice of law provisions.

7.4 **Precedence and Interpretation.** In resolving any conflicts or inconsistencies concerning the scope of the Services to be performed or Deliverables to be provided by Engineer or other rights

or obligations of Owner or Engineer under this Agreement or a Statement of Work, the document or provision expressing the greater quantity or better quality of Services or Deliverables, or imposing the greater obligation upon Engineer and affording the greater right or remedy to Owner, shall govern. Owner and Engineer agree that this Agreement shall be construed in a neutral manner and as if it was drafted jointly by the parties. All headings contained in this Agreement or a Statement of Work are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. Unless otherwise stated, words used in this Agreement or any Statement of Work that have well-known technical or construction or engineering industry meanings shall be construed in accordance with such recognized meanings.

- 7.5 **Severability.** Every provision of the Agreement and its application is intended to be severable such that, if any term, provision or application is illegal or invalid for any reason whatsoever, such term, provision or application shall be severed from the Agreement and shall not affect the validity of the remainder of the Agreement or other applications of such term or provision.
- 7.6 **Prior Work.** In the event that Engineer has performed or procured any Services or Deliverables prior to the date of the Statement of Work due to an authorization to proceed, letter of intent, or other written directive issued by Owner to Engineer, this Agreement and such Statement of Work shall govern such Services and Deliverables to the same extent as though such Services were performed and Deliverables provided after the date of the Statement of Work, and any amounts paid by Owner to Engineer on account of such Services or Deliverables shall be applied as a credit against Engineer's compensation.
- 7.7 **Independent Contractor Status; Designated Representatives.** Engineer agrees that it is an independent contractor of Owner. Nothing in this Agreement or any Statement of Work shall be construed to constitute Engineer as a partner, joint-venturer, co-principal, associate, affiliate, subsidiary, employee, or agent of Owner or any other Indemnitee. In each Statement of Work, each party shall designate an employee as the party's representative with respect to the Project. Except as provided in Section 1.3, such representative may be replaced by the party with reasonable advance notice to the other party.
- 7.8 **Third Party Beneficiary Rights.** Nothing set forth and contained in this Agreement or in any Statement of Work shall create or establish any contractual relationship or obligations between Owner and any of Engineer's employees, subconsultants, vendors, agents, or representatives, nor shall it create a cause of action in favor of any third party against Owner. There are no intended third party beneficiaries under this Agreement, and any and all rights and remedies are exclusively for the benefit of the parties, except that each of Owner's affiliates, subsidiaries, successors and assigns that are involved in the design, permitting, development, construction, or operation of any Project are intended beneficiaries of this Agreement with respect to the Services and Deliverables related to such Project.
- 7.9 **Engineer's Subconsultants.** Engineer shall not subcontract or delegate any obligation or duty without Owner's written consent. Engineer's Project staffing team, including any subconsultants, shall be designated in the Statement of Work, and Engineer shall not make any changes to this staffing without the prior written approval of Owner. Copies of each of Engineer's subconsultant and vendor agreements shall be furnished to Owner within fourteen (14) calendar days from the date of execution by Engineer. Engineer shall require each of its subconsultants and vendors to be

bound to Engineer by the terms of this Agreement and any Statement of Work to the extent applicable to the Services performed or Deliverables provided by such subconsultant or vendor and to assume towards Engineer all of the obligations and responsibilities which Engineer assumes in this Agreement toward Owner and its affiliates with respect to such Services and Deliverables. Engineer shall be fully responsible for all errors, omissions, or negligent acts of its employees and its subconsultants and vendors, and all persons and entities directly or indirectly employed by any of them, and all other persons and entities for whose acts Engineer is responsible under this Agreement or under applicable law. If Owner terminates this Agreement or any Statement of Work under Section 5.1 or Section 5.2, Owner shall have the right, but no duty, to have Engineer's subconsultant and vendor agreements assigned to it upon request, provided that Owner agrees to pay for all Services performed and Deliverables provided under such agreements arising after the effective date of such assignment. In no event shall Owner be liable for any amounts owed by Engineer to such subconsultants or vendors for Services performed or Deliverables provided prior to the date of such assignment, if any. Engineer shall execute such documents and take such other reasonable acts as necessary to effectuate any assignment requested by Owner in its sole discretion in accordance with this Section 7.9.

- 7.10 **No Agency Relationship.** Nothing in this Agreement or any Statement of Work shall be construed to create an agency relationship between Owner or its affiliates and Engineer. Engineer has no actual, implied or apparent authority, rights, duties, or powers to act for or on behalf of Owner or its affiliates, subsidiaries, successors, or assigns, or otherwise to bind or commit any of them to any third party, except as expressly provided in advance in writing by Owner.
- 7.11 **Successors and Assigns.** Owner and Engineer, respectively, bind themselves, their agents, partners, successors, assigns, and legal representatives to the other party to this Agreement and to the agents, partners, successors, assigns, and legal representatives of the other party with respect to all terms, duties, and covenants of this Agreement. Engineer shall not assign or transfer any interest in this Agreement without Owner's written consent. Owner may assign this Agreement or any Statement of Work to another entity upon ~~fourteen~~ ^{THIRTY (30)} calendar days advance written notice to Engineer, provided that such entity assumes Owner's obligations following the effective date of such assignment. Engineer shall execute such documents as may be reasonably requested by Owner to effectuate such assignment.
- 7.12 **Waiver.** No action or failure to act by a party shall constitute a waiver of any right or duty afforded that party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement, except as may be specifically agreed in writing. Owner's right to require strict performance of the Agreement and each Statement of Work shall not be affected by any previous waiver or course of dealings. Owner's permitting Engineer to continue after any applicable completion deadline shall not be construed as a waiver of any claim for damages or increased costs.
- 7.13 **Publicity.** All publicity, press releases, or other announcements, and articles or publications relating to this Agreement, the Services, Deliverables, or any Project shall be subject to Owner's written pre-approval and shall not be published by Engineer or its subconsultants or vendors without such approval.
- 7.14 **Confidential Information.** Engineer and its subconsultants and vendors may be given access to

information that relates to Owner's or its affiliates', subsidiaries', successors', or assigns' past, present, and future research, development, products, services, customers, technical knowledge, and business activities, plans, and strategy. All such information is considered to be confidential ("Confidential Information"). Confidential Information also includes derivatives and modifications to preexisting Confidential Information. However, Confidential Information shall not include information that is independently developed without use of any Confidential Information, separately acquired from a third party that is not under an obligation of confidence with respect to such information, or that is or becomes publicly known through no breach of this Agreement. Engineer and each of its subconsultants and vendors agrees that all Confidential Information shall not be used except in the performance of the Services, nor shall it be disclosed to a third party unless such disclosure is reasonably necessary for the proper performance of the Services, Owner has given its prior written consent to such disclosure, or such disclosure is required by applicable law. Engineer and each of its subconsultants and vendors shall protect the confidentiality of all Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall Engineer or its subconsultants or vendors exercise less than reasonable care in protecting such Confidential Information. If Engineer or its subconsultants or vendors receive a subpoena or other legal demand for any Confidential Information, Engineer shall promptly notify Owner and shall reasonably comply and cooperate with Owner with respect to any response. All Confidential Information, including copies, shall be returned or destroyed upon the request of Owner, the completion or termination of the Services for which access to the Confidential Information was required, or the termination of this Agreement, whichever occurs first. Engineer agrees that an impending or existing violation of the confidentiality provisions of this Agreement would cause Owner or its affiliates, subsidiaries, successors, or assigns irreparable injury for which they would have no adequate remedy at law, and agrees that Owner shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it by law, without the posting of a bond or other security.

- 7.15 **Written Notice.** Whenever written notice is required to be sent under this Agreement, such notice shall be deemed to have been duly served if delivered in person to the designated representative of the party, delivered to such designated representative by certified mail, or delivered to the attention of such designated representative by a reputable delivery service to the address set forth in the preamble of this Agreement or such other address as Owner or Engineer may designate for itself in accordance with this Section 7.15.
- 7.16 **Non-Discrimination.** Engineer shall comply with all federal, state, and municipal and local laws, rules, ordinances, regulations, orders, notices, and requirements relating to non-discrimination in employment, fair employment practices, and equal employment opportunities and shall not discriminate against any employee or applicant for employment to be employed in the performance of the Services with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of his or her race, creed, religion, color, sex, sexual orientation, gender identity, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, or any other characteristic or status protected by law. Engineer shall be responsible for and correct, at its own cost, any violations resulting from or in connection with the performance of the Services. Engineer shall promptly, upon demand, furnish such proof as Owner may reasonably require to demonstrate compliance with such requirements and correction of any violations. Engineer agrees to indemnify each of the

Indemnities from all actions, damages, losses, costs (including reasonable attorneys' fees), and liabilities arising directly or indirectly out of Engineer's or its subconsultants' or vendors' failure to comply with any such laws, ordinances, rules, regulations, orders, notices, or requirements or Engineer's failure to correct such violations. In addition, Engineer shall cause the requirements of this Section 7.16 to be included in all of its agreements with its subconsultants and vendors performing any portion of the Services or providing any Deliverables.

7.17 ~~Minority/Women/Veterans Business Enterprise Program.~~ Engineer shall fully comply with Owner's Supplier Diversity Utilization and Reporting Program ("Owner's Program") as in effect at the time of the effective date of the applicable Statement of Work. Good faith compliance with Owner's Program is a material condition of performance under this Agreement.

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Comment [A14]: This will not be a requirement of Westfield

7.18 **Drug Free Work Site.** Engineer shall develop and enforce a formal substance abuse policy with respect to the performance of all Services which is reasonably acceptable to Owner. Also, Owner has its own Drug Free and Smoke Free Program with which Engineer and each of its subconsultants and vendors are to comply as a condition of performance of the Services.

7.19 **Authority.** The undersigned represent that they are duly authorized representatives of the respective party and have full power, authority, and legal right to make the undertakings in this Agreement, to bind the respective party to these terms, and to execute this Agreement for and on the party's behalf. The parties acknowledge that they have each carefully read this Agreement, understand all of the terms of this Agreement, and have had the opportunity to be independently represented by counsel of their choice with respect to the terms of this Agreement.

7.20 **Execution in Counterparts.** This Agreement may be executed in counterparts by each party signing a separate signature page which then shall be furnished to the other party. Counterparts executed and distributed by email are acceptable and shall be considered as binding and effective as an original signature, and all of which together shall constitute one and the same instrument.

This Agreement represents the entire and integrated agreement between Owner and Engineer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument approved and executed by both Owner and Engineer.

OWNER

ENGINEER

By: _____
Its Duly Authorized Representative

By: _____
Its Duly Authorized Representative

Printed Name and Title

Printed Name and Title

Date: _____

Date: _____

EXHIBIT A

ENGINEER STATEMENT OF WORK AND LIST OF DELIVERABLES

This Statement of Work is executed as of the ____ day of _____, 20__ by and between [Select Owner Name] ("Owner") and _____ ("Engineer"). Owner and Engineer agree that all of the Services authorized by this Statement of Work shall be subject to the terms and conditions set forth within the Master Professional Services Agreement between Owner and Engineer dated _____ (the "Master Agreement"). Upon execution of this Statement of Work, the Master Agreement shall be incorporated into and be considered a part of this Statement of Work as if set forth herein in its entirety. Any capitalized terms which are not defined herein shall have the meanings defined in the Master Agreement.

1. Contract Documents. The following Contract Documents are incorporated into and shall be a part of this Statement of Work as if fully stated herein:

- A. This Statement of Work and its Attachments;
- B. The Professional Engineering Master Services Agreement;
- C. The Rate/Fee Schedule (if any) attached hereto as Attachment ____;
- D. All parts of standards, reference manuals, regulations, and similar documents cited in this Statement of Work; and,
- E. The following documents (if any): _____.

2. Project Name, Description, and Number (the "Project"). The Project which is covered by this Statement of Work is named, described, and numbered as follows:

3. Engineer's Services. The Services to be performed by Engineer under this Statement of Work include all of the following:

4. Engineer's Deliverables. As part of Engineer's Services, Engineer shall provide the following Deliverables in addition to the Deliverables described in Section 3.1 of the Master Agreement:

5. Project Milestone Schedule & Liquidated Damages. The Project Milestone Schedule and Liquidated Damages are as follows:

Milestone: _____ Liquidated Damages: _____ per _____.

Milestone: _____ Liquidated Damages: _____ per _____.

6. Engineer's Key Employees and Project Staffing Team. The following are Engineer's Key Employees and subconsultants and vendors who will perform Engineer's Services, and, with respect to Key Employees, the corresponding percentage of that Key Employee's time that will be devoted to performance of Engineer's Services, and, with respect to subconsultants and vendors, the Services and

Deliverables to be provided by the subconsultant or vendor. Engineer shall not substitute or substantially revise the responsibilities of Key Employees nor change Key Employees without the prior written consent of Owner.

Name of Key Employee

% of Time for Services

Name of Subconsultant / Vendor

Services and Deliverables to be Provided

7. Compensation Schedule and Reimbursable Expenses. Engineer's Compensation for its Services shall be in accordance with the Agreement and the following Compensation Schedule. Engineer shall be compensated for Reimbursable Expenses according to the following Compensation Schedule subject to the limitations stated on the attached Exhibit A-1.

Compensation Schedule:

8. Engineer's Insurance Requirements.

Comment [A15]: Review closely

The following are the insurance coverage requirements of Engineer under the Agreement:

(a) Engineer shall maintain, at Engineer's sole cost and expense, such insurance as will provide protection from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to employees and all others; and from claims for damages to property, any or all of which may arise out of or result from Engineer's operations under this Agreement, whether such operations be by Engineer or by any subcontractor or subconsultant or anyone directly or indirectly employed by either of them.

(b) Engineer shall furnish Owner with a certificate of insurance, from companies satisfactory to Owner, evidencing coverage of not less than the following limits of liability and listing Owner and any affiliate or subsidiary described in Section 7.8 as additional insureds—utilizing endorsement CG2026 (07/04) in combination with CG2037 (7/04) or the equivalent which covers ongoing and completed operations—on a primary and non-contributory basis on all policies except Workers' Compensation and Professional Liability:

(c) Standard Workers' Compensation & Employer's Liability \$1,000,000

<u>Workers Compensation</u>	<u>Statutory</u>	<u>\$1,000,000</u>
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<u>Employer's Liability</u>	<u>\$1,000,000</u>
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Commercial General Liability:

(including, but not limited to, bodily injury, personal injury, property damages, contractual liability, and products-completed operations):

General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

Comprehensive Automobile Liability:
(including coverage for liability arising out of owned, non-owned and hired autos and for bodily injury and property damage):

Each Accident \$1,000,000

Engineer's Pollution Liability \$50,000

Umbrella Liability:
(including fire legal liability coverage in excess of and concurrent with the above liability coverages):

Combined Single Limit ⁵ ~~\$10,000,000~~

~~Professional Liability~~ ~~\$5,000,000~~

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Comment [A16]: Not Required

(d) All such insurance policies shall be endorsed to provide a ten-day written notice of cancellation to the Owner. The Comprehensive General Liability policy and the Umbrella Liability policy shall contain contractual liability coverage for all of Engineer's indemnity obligations undertaken in this Agreement except its professional services indemnity set forth in Section 7.1.

9. Owner's Designated Representative.

10. Engineer's Designated Representative.

11. Effective Date. Notwithstanding anything herein to the contrary, this Statement of Work shall not be valid and enforceable unless and until Owner issues to Engineer a purchase order for this Statement of Work. The Effective Date for this Statement of Work shall be the date of such purchase order.

IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work to be effective as of the Effective Date.

OWNER:

ENGINEER:

Signature

Signature

Print _____

Print _____

Title: _____

Title: _____

Exhibit A-1

Reimbursable Expenses

NONE JR

Comment [A17]: These will not apply.
Reimbursement for services on an hourly basis
inclusive of cost

Subject to the terms of the Agreement and this Exhibit A-1, Engineer shall be entitled to be reimbursed by Owner for only the following Reimbursable Expenses as set forth herein:

- Travel: Engineer will obtain written approval from Owner prior to proceeding with booking travel arrangements. Only upon approval being obtained shall Engineer pre-book travel arrangements in order to obtain reduced rates.
- Lodging (non Per Diem): When on approved business for Owner, single room rates, taxes, surcharges for telephone usage are reimbursable. Double occupancy is not authorized. Whenever possible, Engineer shall accommodate locations where Owner has established preferred corporate rates.
- Lodging (Per Diem): When authorized by Owner in advance and in writing.

Lodging billed at the published General Services Administration or Federal Per Diem rate for the city in which the Services is being performed. Receipts or additional documentation are not required.
- Business Meals where Owner employee is present: Owner is expected to pay for the meal. In the event that Engineer pays for Owner employee(s) meal, Engineer must document their names and the purpose of the meal. The original receipt from the establishment (not the credit card receipt) must support meal charges.
- Personal Meals (non Per Diem): Only during travel as a direct result of the engagement, where no per diem is being provided. Reimbursement for alcohol is not permitted at any time.
- Personal Meals (Per Diem): When authorized by Owner in advance and in writing.

Meals will be billed at the published General Services Administration or Federal Per Diem rate for the city in which the Services are being performed. Receipts or additional documentation are not required.
- Parking: When using authorized rental car or personal automobile while conducting Owner related business, including airport parking.
- Tips: Reasonable tips to doormen, porters, housekeeper, etc. when on travel status. This is not a catch-all category. Receipts are required for each expense of \$10.00 or more.

STRIKE JR

- Air Fare: Economy or coach class air travel is standard for all business travel within North America.
- Ground Transportation: Receipts are required for each expense of \$10.00 or more.
- Personal Vehicle: When conducting Owner related business.

Personal vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the travel is performed.
- Car Rental: When authorized in connection with Owner business travel.

Engineer is expected to rent "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable, or upgrades are provided at no extra charge.

Engineer shall use either Owner's preferred car Rental Owner when applicable.

Engineer must refuel rental car before returning it to Rental Agency.
- Telephone: At cost. Copy of telephone provider invoice required with appropriate charges clearly identified.
- Materials & Supplies: Material and supplies are expected to be provided by Owner.
- Business Entertainment: Not permitted. All business entertainment must be paid by Owner.
- Cash Drafts: Not permitted.
- Club/Gym Memberships: Not permitted.
- Personal Entertainment: Personal entertainment expenses including movies are not permitted.
- Flight Insurance: Any flight insurance is not permitted.
- Laundry & Valet Service: Only after five days of travel.
- Other Items Not Identified Above: Not permitted.

In addition, Engineer shall comply with the following requirements related to the Reimbursable Expenses:

1. If Owner requests Engineer to perform Services on-site, Engineer shall maintain a weekly schedule for the entire duration of the engagement. This schedule shall delineate work location, travel, and living arrangements, as well as cost estimates and it shall be reviewed and mutually agreed upon by Owner and Engineer on a regular basis.

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2. Engineer will only seek reimbursement for expenditures that are necessary and directly applicable to the Services being performed under this Statement of Work. All expenses are to be billed to Owner at cost.

3. The billing for reimbursement of expenses to Owner is to be specifically identifiable to this Statement of Work and shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, Engineer/sub-consultant paid invoices, and other supporting documents used by Engineer in order to generate invoice(s) to Owner. The original supporting documents shall be made available to Owner for inspection upon request.